

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 17.07.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice V.DHANAPALAN

Habeas Corpus Petition No.491 of 2006

Rajeswari

... Petitioner

Vs.

1. The District Magistrate and
District Collector of
Tiruvannamalai district
Tiruvannamalai.
2. The State of Tamilnadu rep.
By its Secretary to Government
Prohibition and Excise Department,
Fort St.George, Chennai 9.

... Respondents

Petition under Article 226 of the Constitution of India for the issuance of a Writ of Habeas Corpus to call for the records relating to the detention order dt.28.4.2006 passed by the first respondent herein in his office ref.D.O.No.29/2006.C2 quash the same and direct the respondents to produce the petitioner's husband Anandan, son of Ramalingam, Se.Andapattu village, Chengam taluk, Tiruvannamalai district presently undergoing detention in the Central Prison, Vellore under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum Grabbers and Video Pirates Act before this Hon'ble Court and set the detenu at liberty.

For Petitioner : Mr.P.Mani

For Respondents: Mr.Babu Muthu Meeran
Addl. Public Prosecutor

O R D E R

(Order of the Court was made by P.Sathasivam, J.)

The petitioner, who is the wife of the detenu by name Anandan, who was detained as a "Bootlegger" as contemplated under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982), by the impugned detention order dated 28.4.2006, challenges the same in this Petition.

2. Heard learned counsel for the petitioner as well as learned Additional Public Prosecutor for the respondents.

3. At the foremost, learned counsel for the petitioner by drawing our attention to the fact that at the time of arrest, though the sponsoring authority has registered a case under Section 4(1)(i) and 4(1-A)(ii) of the Tamil Nadu Prohibition Act (hereinafter referred to as the Act) and only later the same was altered as 4(1)(i), 4(1)(aaa) read with 4(1-A)(ii) of the Act. It is not clear how the authority mentioned even the altered provision in the Mahazar which was prepared at 13.00 hrs. on 9.4.2006. In the absence of proper explanation, according to the learned counsel for the petitioner, the detention order is liable to be quashed.

4. In the light of the said contention, we verified the details mentioned in the FIR which shows that the occurrence took place at 9.30 a.m. on 9.4.2006 and the information was received by the police at 11.30 a.m. on 9.4.2006. In the First Information Report, the offences mentioned are 4(1)(i) and 4(1-A)(ii) of the Act. As rightly pointed out by the learned counsel for the petitioner, only after seizure which took place at 13 hrs. on 9.4.2006, the sponsoring authority is able to know the quantum of illicit arrack. In such circumstances, it is not clear how the Mahazar contained Section 4(1)(aaa) of the Act. In the absence of proper explanation, we are of the view that the detaining authority has not applied his mind to this aspect before passing the detention order. On this ground, the detention order is liable to be quashed.

5. Accordingly, the Habeas Corpus Petition is allowed and the impugned order of detention is quashed. The detenu is directed to be set at liberty forthwith from the custody unless he is required in some other case or cause.

ajr

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary to Government,
Prohibition and Excise Dept.,
Fort St.George, Chennai-9.
2. The District Magistrate and
District Collector of
Tiruvannamalai district
Tiruvannamalai.
3. The Superintendent,
Special Prison, Vellore
(In duplicate for communication to detenu)
4. The Joint Secretary to Government,
Public (Law and Order)
Fort St. George, Chennai-9.
5. The Public Prosecutor,
High Court, Madras.

+ 1 cc to Mr.P. Mani, Advocate SR No.30899/06

TM(CO)
SR/24.7.2006

HCP. No.491 of 2006